

1 **SYLVESTER OWINO**
2 **A97-469-354**
3 **San Diego Detention Center (CCA)**
4 **P.O. Box 439049**
5 **San Ysidro, CA 92143**

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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
11 **(HON. WILLIAM Q. HAYES)**

12 **SYLVESTER OWINO,**
13 **[A97-469-354]**

14 **Petitioner,**

15 **v.**

16 **MICHAEL CHERTOFF, et al.,**

17 **Respondents.**

No. 07-CV2267-WQH (POR)

18
19 **DECLARATION OF JAMES FIFE IN**
20 **SUPPORT OF PETITIONER'S MOTION**
21 **FOR RECONSIDERATION OF MOTION**
22 **FOR APPOINTMENT OF COUNSEL**

23 I, James Fife, declare:

24 1. I am an attorney duly licensed to practice law in the State of California, in the United States
25 District Court for the Southern District of California, and in the United States Court of Appeals for the Ninth
26 Circuit.

27 2. I am an employee of Federal Defenders of San Diego, Inc. In my capacity as an employee
28 of Federal Defenders, I am assisting the petitioner, Sylvester Owino, in securing his release from the custody
of federal immigration officials, and in filing a petition for a writ of habeas corpus in the United States District
Court for the Southern District of California.

3. On December 3, 2007, concurrent with the Petition in this case, I filed on Mr. Owino's behalf
a Motion for Appointment of Counsel.

1 4. On December 18, 2007, this Court denied the Motion without prejudice.

2 5. On January 18, 2008, Respondents filed their Return, raising a claim that the Petition should
3 be denied, because Mr. Owino has deliberately obstructed his removal in the meaning of Pelich v. INS, 329
4 F.3d 1057 (9th Cir. 2003).

5 6. On January 29, 2008, again on Mr. Owino's behalf, I filed a Motion for Reconsideration of
6 the Motion to Appoint Counsel, noting that the Return and the course of events had altered the original legal
7 posture of the case. Although the Petition was originally brought on the basis of Tijani v. Willis, 430 F.3d
8 1241 (9th Cir. 2005), and Nadarajah v. Gonzales, 443 F.3d 1069 (9th Cir. 2006), it appeared that Kenya was
9 resisting repatriation, and so Mr. Owino's case now had the characteristics of a classic instance falling under
10 Zadvydas v. Davis, 533 U.S. 678 (2001). Given the growing factual and legal complexity of the case,
11 Mr. Owino requested the Court reconsider appointment so that he had the assistance of counsel in preparing
12 the Traverse.

13 7. On February 13, 2008, Respondents filed a non-opposition to the Motion to Reconsider.

14 8. On February 15, 2008, I filed a Traverse on behalf of Mr. Owino, denying he had engaged
15 in any deliberate obstruction and arguing that he had gone to extraordinary personal lengths to effect his
16 removal from the United States.

17 9. To date, the Court has not acted on the reconsideration motion.

18 10. On April 30, 2008, the Court ordered Respondents to update the Court on the status of
19 travel document requests from Kenya.

20 11. On May 19, 2008, Respondents filed their Update per the Court's Order. In the Update,
21 Respondents allege further acts which they characterize as deliberate obstruction, such as contacting
22 Mr. Owino's own embassy officials. Respondents object to what they describe as "a pattern in similar cases
23 in which habeas petitioners and/or their attorneys are communicating with foreign consulates for purposes
24 unrelated to the facilitation of the issuance of travel documents." Respondents present a one-sided and
25 skewed depiction of Mr. Owino's actions and raise legal issues which stretch far beyond the original confines
26 of the Petition, including what counts as "obstruction" and whether Respondents have the right to insist that
27 detainees refrain from contacting their own diplomatic missions—in person or through their attorneys—to make
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1 legitimate inquiries on the status of their cases, to gather information in support of their habeas petitions, and
2 to confirm the truth of Respondents' often overly optimistic assertions that travel documents are in the works.

3 12. Respondents' allegations raise a welter of legal and factual issues to which Mr. Owino has
4 been given no formal means of response. As this Court did not grant Mr. Owino permission to respond or
5 submit his own update, the full facts regarding Mr. Owino's actions are not before the Court. Respondents'
6 pleading is an essentially *ex parte* communication, because Mr. Owino has been given no right to respond
7 with his version of the facts.

8 13. This latest filing raises even more legal complications and factual disputes beyond those
9 in the Return, which itself greatly complicated the posture of this case. Mr. Owino's inability pro se to defend
10 his Petition amid shifting legal and factual circumstances is impinging on this right to due process and a fair
11 hearing. He has no way to research the legal issues raised or to address the factual assertions of events
12 occurring in other detainees' cases. Appointment of counsel is necessary for Mr. Owino's timely and full
13 participation in this increasingly complicated case. The case has now moved a long way from the
14 circumstances when this Court could characterize it as one where Mr. Owino "has clearly presented the facts
15 and law" pertinent to the active issues in the case. Appointment is necessary for a proper and efficient airing
16 of the disputed matters which have arisen here.

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18 I declare under penalty of perjury that the foregoing is true and correct, except for those
19 matters which are stated to be on information and belief, and as to those matters, I believe them to be true.

20 Executed on this 21st day of May 2008, in San Diego, California.

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23 **JAMES FIFE**
24 Declarant
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